

In the Matter of Merchant Mariner's Document No. Z-69499-D1 and all
other Licenses, Certificates and Documents
Issued to: WILLIE ZUBB

DECISION AND FINAL ORDER OF THE COMMANDANT

UNITED STATES COAST GUARD

837

WILLIE ZUBB

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 11 July 1955, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-69499-D1 issued to Willie Zubb upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as an able seaman on board the American SS SANTA OLIVIA under authority of the document above described, on or about 24 May 1955, while said vessel was at Cristobal, Canal Zone, he assaulted and battered a fellow crew member, Han Check Juan; and he wrongfully created a disturbance on board the vessel.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statements and introduced in evidence the testimony of the seaman allegedly assaulted and the testimony of the ship's Boastwain who witnessed the incident in question.

In defense, Appellant offered in evidence his sworn testimony and the testimony of two other eyewitnesses.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant, the Examiner announced his findings and concluded that the charge had been proved by proof of the two specifications. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-69499-D1, and all

other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of eighteen months - six months outright suspension and twelve months suspension on twelve months probation from the date of termination of the outright suspension.

From that order, this appeal has been taken, and it is urged that Juan constantly made insulting remarks about Appellant's wife; Appellant had asked him to stop making these remarks; such remarks started the trouble on 24 May; and Appellant spontaneously protected himself by kicking Juan when Appellant was warned that Juan was armed with a butcher knife. In view of these strong mitigating circumstances and Appellant's clear record since 1949, it is respectfully requested that the order be set aside or reduced to a probationary suspension in order to permit Appellant to visit and provide for his family in Peru.

APPEARANCES: Lester Yudenfriend, Esquire, of New York City, of Counsel.

Based upon my examination of the record submitted, I hereby make the following.

FINDINGS OF FACT

On 24 May 1955, Appellant was serving as an able seaman on board the American SS SANTA OLIVIA and acting under authority of his Merchant Mariner's Document No. Z-69499-D1 while the ship was in the port of Cristobal, Canal Zone.

At about 1700 on 24 May 1955, Appellant was eating his evening meal in the crew's messhall. Han Check Juan, a bedroom utilityman who was present, made a remark to a fireman that Appellant had a "girl friend" in Callao, Peru. Appellant considered this to be a personal insult and became angry because his wife lived in Callao. Appellant threw some food in Juan's face and struck him twice in the face. Juan ran from the messhall and Appellant resumed eating his meal.

Juan went to the nearby galley and obtained two butcher knives. He then returned to the messhall and approached Appellant. The Boatswain and crew warned Appellant. He quickly turned to face Juan who was then very close to Appellant and had a knife in his raised hand. The Boatswain disarmed Juan and the two seamen were permitted to fight with their fists. Juan was beaten by Appellant. After the fight was stopped, the police came on board but no action was taken except that both men were logged for this incident. Juan was injured in the leg when he was struck with one of the wooden bath slippers which Appellant was wearing at the time of the fight.

Appellant is 36 years of age and has been going to sea for 19 years. His prior disciplinary record consists of two offenses of assault and battery, three offenses of failure to join and two offenses of failure to perform duties due to intoxication. Appellant has no disciplinary record subsequent to 1949 except the present case.

OPINION

The testimony of the witnesses is substantially in accord as to the facts. The language used by Juan does not constitute a defense to the charge of assault and battery upon Juan prior to the time when he had the knives in his possession. Provocation by insulting words does not justify an assault and battery. 5 Corpus Juris 644. While the conduct of Juan in later obtaining the knives cannot be condoned, this action was irrelevant with respect to the initial assault and battery upon Juan by the Appellant. The subsequent mutual combat by the two seamen, after Juan was disarmed, created a sufficient disturbance to cause the police to come on board. Appellant was at fault for the disturbance since he voluntarily engaged in a fight with Juan. Hence, Appellant was guilty of both offenses alleged in the specifications.

The necessity to maintain discipline on merchant ships of the United States requires the imposition of an order of suspension despite the personal hardship to Appellant and his family. In consideration of the initial provocation by Juan and Appellant's clear record for the past six years, the Examiner's order will be mitigated to the extent of reducing the outright suspension to a period of four months.

ORDER

The order of the Examiner dated at New York, New York, on 11 July 1955 is modified to provide that Merchant Mariner's Document No. 69499-D1, and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority, are suspended for a period of sixteen (16) months. The last twelve (12) months of this suspension shall not be effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against Appellant for acts committed within twelve (12) months of 11 November 1955.

As so MODIFIED, said order is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 25th day of October, 1955.